

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE COMMUNICATION

TO: Land and Water Management Division Staff

FROM: J. Wilfred Cwikiel, Acting Chief
Land and Water Management Division

DATE: June 2, 2006

SUBJECT: Interim Policy Guidance on Great Lakes Beach Maintenance and Vegetation Removal Activities

The purpose of this memorandum is to provide guidance to Land and Water Management Division staff regarding the regulation of beach maintenance and vegetation removal activities in the time between the June 5, 2006, sunset of Public Act 14 of 2003 (Act 14) and when the workgroup recommendations (described below) are presented and implemented.

Background

Water levels in the Great Lakes are subject to long-term fluctuations that expose bottomlands in low water years. The regeneration of shoreline vegetation on bottomlands exposed during low water is a normal component of nearshore ecology, and is important to the long-term health of the Great Lakes ecosystem. Coastal wetlands, including exposed and vegetated Great Lakes bottomlands, are considered to be the most ecologically valuable areas in the Great Lakes. In many areas along Michigan's coast, the shoreline ecology has been adversely impacted by pollution and invasive species such as *Phragmites*.

In 2003, Part 303, Wetlands Protection, and Part 325, Great Lakes Submerged Lands, of the Natural Resources and Environmental Protection Act, 1994, PA 451, as amended (NREPA), were amended by Act 14 to streamline authorizations for beach maintenance and vegetation removal activities between the ordinary high water mark of the Great Lakes and the water's edge. These amendments were in response to concerns raised by shoreline property owners regarding increased growth of vegetation resulting from low water levels in the Great Lakes and regulatory actions taken by the Department of Environmental Quality (DEQ).

Act 14 provided definitions of beach maintenance activities; created exemptions (scheduled to sunset on November 1, 2007); established two pilot areas where property owners could be authorized to remove shoreline vegetation under a Letter of Approval from the Director of the DEQ (scheduled to sunset on June 5, 2006); and required the DEQ to evaluate the impacts of the legislation and provide policy recommendations.

In May of 2006, the DEQ conducted community forums in Bay City and Traverse City for the purpose of sharing the findings of the DEQ's report and gathering additional feedback from shoreline residents and community members. Issues expressed included concerns about aesthetics, property values, health and safety, use of the lakeshore, invasion of *Phragmites*, and how beach maintenance and shoreline vegetation removal will be regulated in the pilot areas after the scheduled June 5, 2006, sunset of the authority to issue Director's Letters of Approval.

In an effort to develop an improved approach to regulating shoreline vegetation removal and beach maintenance activities, the DEQ has convened a workgroup of property owner representatives and environmental advocates. This workgroup will conduct field visits and provide initial recommendations by the end of July 2006. Simultaneous with the implementation of these recommendations, the work group will develop a long-term beach maintenance and vegetation removal management strategy by July 2007.

In addition to guiding statewide policy, the outcome of this workgroup will contribute to the Saginaw Bay Coastal Initiative, a DEQ-backed effort that seeks to restore coastal habitat, develop a comprehensive plan to address invasion of *Phragmites*, promote voluntary ecosystem protection, and identify short and long-term projects that expand and diversify the economy while protecting environmental integrity.

Activities That Do Not Require a Permit Anywhere in the State

The following shoreline property owner activities are not regulated by the DEQ, nor the U.S. Army Corps of Engineers (USACE):

1. Hand shoveling or manual raking and removal of dead fish, zebra mussel shells, dead vegetation, and trash from shoreline areas.
2. Manual burying of natural debris such as dead fish and vegetation.
3. Hand shoveling and raking wind-blown sand from homesites.

Activities That Do Not Require a Permit from the DEQ (Except in Designated Environmental Areas Established Under Part 323, Great Lakes Shorelands, of the NREPA)

For those landowners who have removed vegetation by legal means (i.e., an approved permit or a letter of authorization), or on shorelines that are naturally free of vegetation, the landowner may continue to maintain the area free of vegetation through manual and mechanical grooming and *de minimis* hand pulling as defined in statute and described below.

Until November 1, 2007, the following beach maintenance activities, when conducted between the water's edge and the ordinary high water mark, are exempt from DEQ regulation statewide except in designated Environmental Areas established pursuant to Part 323. See the DEQ's Web site at www.michigan.gov/deq/0,1607,+7-135-3304-10863--,00.html for information on Environmental Area boundaries. It is important to note that some of these activities require a permit from the USACE prior to being conducted. The activities that are exempt include:

1. Manual or mechanized leveling and relocation of sand within areas that are predominantly free of vegetation, including sand that has been deposited through wind and wave action onto upland property (requires USACE permit).

2. Mowing of vegetation to not less than two (2) inches, without disturbing plant roots, and up to 100 feet in width, or width of lakeshore frontage, whichever is less. Threatened or endangered plant species shall not be mowed. Property owners may contact the DEQ Land and Water Management District staff for information on threatened and endangered plant information.
3. Manual *de minimis* removal of vegetation. Hand removal of large amounts of shoreline vegetation is not considered *de minimis*. Threatened or endangered plant species shall not be removed.
4. Mechanical grooming in areas predominantly free of vegetation in the top four inches of soil without disturbance or destruction of plant roots (requires USACE permit).
5. Construction and maintenance of a path to provide temporary access from upland to the water's edge across swales with standing water, not exceeding six (6) feet in bottom width and consisting of sand and pebbles obtained from exposed non-vegetated areas of the bottomland or from the adjacent upland property (requires USACE permit).

Activities that Require a Permit Where a Permit Has Not Been Previously Issued

The following activities require an individual permit prior to being conducted. The permit application is located on the DEQ Web site. DEQ staff will endeavor to process permit applications as quickly as possible.

1. Vegetation Removal--As of June 5, 2006, activities that involve more than the *de minimis* removal of vegetation from the Great Lakes shoreline between the ordinary high water mark and the water's edge.
2. Mowing of vegetation or mechanized beach grooming activities waterward of the water's edge.
3. Herbicide treatment of vegetation below the ordinary high water mark.

In order to ensure consistent application of these requirements, staff should follow this guidance when communicating with the public.

J. Wilfred Gorkiel / s.m.



JENNIFER M. GRANHOLM
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STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



STEVEN E. CHESTER
DIRECTOR

FOR IMMEDIATE RELEASE
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Cooperative Effort Creates Innovative Beach Grooming Agreement

The Department of Environmental Quality announced an agreement today between the state, shoreline property advocates, and environmental groups that will protect Michigan's Great Lakes coastal resources while allowing Michigan residents access to our vast water resources. The agreement comes following a number of meetings between the DEQ and the public to discuss the impacts of beach grooming, and develop a long-term strategy to determine what types of maintenance activities should be allowed, and how to control the spread of Phragmites and other invasive shoreline plants.

In June of 2003, the Michigan Legislature exempted mowing and other beach maintenance activities from wetland protection requirements, and established two pilot areas where vegetation removal in Great Lakes coastal wetlands would be given expedited approval.

The DEQ released an independent study earlier this year that showed that clearing vegetation through a coastal marsh alters the conditions of nearshore waters, reducing or eliminating habitat for Michigan's important game fish including yellow perch, smallmouth bass, and largemouth bass.

In light of this research, DEQ Director Steven E. Chester recommended to the Legislature that the provisions created through the 2003 legislation be allowed to expire,

but made it clear that the DEQ would continue to work with concerned property owners and residents to address their concerns.

"We have developed a policy that helps property owners and DEQ staff work better together," said Director Chester. "This is a great example of all sides of an issue coming together and working towards the common good, and is truly a step forward in keeping our environment safe."

Director Chester thanked the shoreline property owners and environmental groups for their help in creating a collaborative process to develop an improved approach to regulating shoreline vegetation and beach maintenance. The ongoing process may eliminate the need for new legislation, and will result in a workgroup being established to develop preliminary recommendations to address beach maintenance and vegetation removal by the end of July, 2006, with a final management plan in place by July, 2007. The agreement also calls on the DEQ to release an Interim Policy Guidance that explains what activities are currently allowed under Michigan law.

"I am encouraged by the discussions between the shoreline property owners and the DEQ," said Ernie Krygier, President of Save Our Shoreline. "By working together, my hope is that we will develop a long term plan for our beaches that will respect the property rights and needs of the homeowners, while protecting valuable resources."

The Interim Policy Guidance makes it clear that landowners who have historically removed vegetation by legal means may continue to maintain the area free of vegetation without the need for additional permits. This work can also be done on shorelines that are naturally free of vegetation.

The guidance also outlines other activities that can be conducted without a permit from the DEQ, though it specifies that some of them may require a permit from the Army Corps of Engineers. For work that does require a permit, DEQ staff will work to process applications as quickly as possible. Permit applications are available on the Web site, or in local DEQ offices.

"We were interested in finding a common-sense resolution to this issue which recognized the critical role coastal wetlands play for our wildlife and fisheries resources," said Sam Washington, Executive Director of the Michigan United Conservation Clubs. "We believe that this Agreement meets our goals."

The interim policy guideline will be available on the DEQ's Web site at www.michigan.gov/deq

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Editor's note: DEQ news releases are available on the department's Internet home page at www.michigan.gov/deq.

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